

COMPLIANCE BOARD OPINION NO. 02-6
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June 21, 2002

Ms. Bonita L. Bray
Ms. Susan L. Bailey
Ms. Lynn M. Topp

The Open Meetings Compliance Board has considered your complaint that the Mount Rainier City Council violated various requirements of the Open Meetings Act in connection with meetings held between February 5, 2002, and April 2, 2002. For the reasons set forth below, the Compliance Board finds that the public notice procedures followed by the City Council complied with the Act. Likewise, we find that the Council's voting procedures prior to a closed session complied with the Act. We also find, however, that the City Council violated the Act by failing to prepare an adequate written statement prior to certain closed meetings, failing to keep minutes of closed sessions, and failing to disclose in subsequent open meeting minutes certain information about prior closed meetings.

I

Complaint and Response

The first element of the complaint concerns alleged inadequacies in the provision of public notice of the meetings identified in the complaint. As we understand it, the complaint is not that the City Council failed to provide notice at all. Rather, the complaint is that the Council, in the published agendas that constituted notice of meetings, included a boilerplate reference to the possibility that any meeting might be closed rather than more specific notice of the anticipated basis for closing a particular meeting. The complaint also suggests that notice of anticipated closed meetings through the release of agendas was untimely, because these agendas "have not been prepared and/or made available to the public more than one day before the day of each meeting"

With respect to the procedures for closing a meeting, the complaint alleges deficiencies in the process of voting. Specifically, the complaint alleges that, prior to closed sessions on February 5, February 12, February 19, March 19 and April 2, 2002, no vote occurred. Instead, the closed sessions were "preceded by an announcement from the Mayor or Vice Mayor indicating the Council's intentions. In no instance was a roll-call vote taken in public session" In addition, the complaint alleges deficiencies in the preparation of written statements prior to closed meetings:

A “Statement for Closing a Meeting,” required by the Act before a public meeting is closed, was included in minutes of the February 19 council meeting. However, it was dated February 26 – clearly prepared after the fact – and it contained no specific information regarding the reason to close. No similar statement has appeared in subsequent minutes; nor was any such statement provided prior to any of the six closed sessions.

Finally, the complaint alleges two deficiencies with respect to minutes. One is that, “in all cases, according to city hall support staff, separate minutes of the closed sessions do not exist. A record of the proceedings is, apparently, wholly contained within minutes of the public council meetings occurring the same evening.” The other allegation is that the portion of the publicly available minutes does not contain the information about the closed session required by the Act. With respect to closed meetings on February 5, February 19, and March 5, “at best, [the] February 19 [information] reaches the level of ‘uninformative boilerplate.’ The other two provide no voting record; no citation of the provision of the Act that allowed the meeting to be closed; and no listing of the topics of discussion, persons present, and each action taken during the session.”

In a timely response on behalf of the Mount Rainier City Council, Assistant City Attorney Linda S. Perlman contends that the notice procedures followed by the City Council conform to the requirements of the Act. With respect to voting procedures, and the preparation of a written statement, Ms. Perlman indicates that for each of the closed meetings in question,¹ “there was a motion for the Council to go into executive session and a second to the motion. In addition, before the vote on the closing of the meeting was conducted, the reason for closing the meeting ... was stated publicly. Although roll call votes were not taken, there were voice votes; that is, the Mayor asked everyone in favor of going into executive session to signify by saying ‘aye,’ and/or asked anyone who objected to the proposed executive session to say ‘nay.’” These votes are recorded on a written “Statement for Closing a Meeting,” which, with one exception, are said to have been completed properly before each closed session.²

¹ Ms. Perlman indicated that no closed session in fact occurred on February 5, 2002, although one had been scheduled.

² The exception concerns the meeting of March 26, the statement for which concededly “is not signed and nothing is checked under the Statutory Authority to Close Session.”

Finally, the response acknowledges deficiencies in the City Council's preparation of minutes. Specifically, the response acknowledges that minutes of closed sessions are not now being kept. Moreover, the response concedes that open session minutes "are technically deficient as they admittedly fail to include the information that the Act requires" concerning the prior closed session. Ms. Perlman indicates that corrective steps are being taken to bring the City Council into compliance.

II

Analysis

A. Notice

A public body is required to "give reasonable advance notice" of every open or closed meeting. §10-506(a) of the State Government Article, Maryland Code. Notices are to be in writing; are to include "the date, time and place of the session; and ... if appropriate, include a statement that a part or all of a meeting may be conducted in closed session." §10-506(b).

The City Council seeks to comply with these requirements through a combination of a published calendar and publicly available agendas. The calendar, included in a monthly newsletter mailed to all Mount Rainer residents, states that Council meetings are held on the first and third Tuesdays of the month³ and implies that the meetings are open, at least in part, because the calendar notes that members of the public may address the Council for up to five minutes. The calendar also notes Council work sessions on the second and fourth Tuesday of the month. The calendar does not state whether any portion of the Council worksessions are expected to be closed. Further information is provided through agendas, which, according to Ms. Perlman's response, are posted at City Hall by the close of business on the Friday before a Tuesday evening City Council meeting or worksession. A typical agenda for the period in question simply indicated that "the Council may go into executive session at any time."

In our opinion, this procedure for public notice is a reasonable one. The combined newsletter and agenda information are timely and together contain the relatively few elements of information required by the Act. In the notice of a meeting (as distinct from a written statement at the time of closing, to be discussed below), the Act requires no explanation about why a session might be closed. The notice need only apprise the public of the possibility.

³ In addition to this general statement, the calendar identifies the specific dates for the ensuing month's meetings.

To be sure, some public bodies more clearly differentiate between meetings that are expected to remain open throughout and meetings that are expected to be closed throughout (after the vote to close, which must occur in public). For the former, the public body's notice would omit any reference to the possibility of a closed session. But we find nothing unlawful about the Mount Rainier City Council's practice of retaining the possibility of a closed session at all of its meetings by notifying the public to that effect.

B. Closed Session Procedures

The Act allows a closed session only if a majority of members of a public body, in a recorded vote, support the closing of the session. §10-508(d)(1) and (2)(i). The Act does not prohibit a voice vote, so long as individually identifiable votes are recorded. The purpose of this requirement is to promote public accountability in the decision to close a meeting. *See, e.g.* Compliance Board Opinion 96-12 (November 20, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 191.

The City Council asserts that this requirement was satisfied for each of the closed sessions at issue and has provided documentation, in the form of a record of individual votes in the written "Statement for Closing a Meeting" for each meeting. Consequently, we find no violation of the Act in the voting procedures used by the City Council.

The written "statement" used by the City Council is intended to comply with the Act's requirement that the presiding officer make such a statement, which must set forth "the reason for closing the meeting, including a citation of the authority under [the Act], and a listing of the topics to be discussed." §10-508(d)(2)(ii). The form used by the Council, if completed properly, would satisfy this requirement.

We note several deficiencies, however, in these statements as actually written. The statements for meetings on February 12, February 19, March 5, and March 19 omit any information about the topics to be discussed and the reason for closing. Moreover, the statement from March 26 not only omits that information but also fails to indicate the statutory authority under which the session was closed and is not signed by the presiding officer. These omissions violated the Act.

C. Minutes

In light of the City Council's acknowledgment that its practices with respect to minutes during the period in question were not in compliance with the Act, extensive discussion is not necessary. The City Council violated the Act by failing to keep minutes of closed meetings and by failing to provide a sufficient summary in open meeting minutes of the preceding closed meeting. *See* §10-509(b) and (c).

The Compliance Board notes with approval Ms. Perlman's indication that training and other efforts will be undertaken to promote future compliance.

III

Conclusion and Summary

The Mount Rainier City Council has complied with the Open Meetings Act in its procedures for giving notice of its meetings and for voting to close a session. The City Council has violated the Act, however, in its practices with respect to the preparation of written statements prior to closing a meeting and in the preparation of minutes.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb